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*Jennifer Holbrook, Rosemarie*  
*Taimanglo and Vivienne Villanueva*

IN THE DISTRICT COURT OF GUAM

U.S. EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION,

Plaintiff,

vs.

LEO PALACE RESORT,

Defendant.

CIVIL CASE NO. 2:06-00028

**PLAINTIFF-INTERVENORS'**  
**TRIAL BRIEF**

JENNIFER HOLBROOK,  
VIVIENE VILLANUEVA and  
ROSEMARIE TAIMANGLO,

Plaintiff-Intervenors,

vs.

MDI GUAM CORPORATION dba LEO  
PALACE RESORT MANENGGON HILLS  
and DOES 1 through 10,

Defendants.

Trial date: December 4, 2007

Trial time: 9:00 a.m.

///

**ORIGINAL**

1 Plaintiff-Intervenors hereby files their Trial Brief pursuant to District Court of Guam Local  
2 Rue 16.7(b).

3 **FACTUAL BACKGROUND**

4 This case involves the Title VII and territorial claims that Ms. Rosemarie Taimanglo, Ms.  
5 Jennifer Holbrook and Ms. Vivienne Villanueva have set forth against MDI Guam Corporation dba  
6 Leo Palace Resort Manenggon Hills ("Defendant"). The Equal Employment Opportunity  
7 Commission ("EEOC"), an agency of the United States of America, filed a Complaint against  
8 Defendant for violations of Title VII of the Civil Rights Act of 1964. On January 8, 2007, the Court  
9 issued an Order permitting Intervention and Plaintiff-Intervenors filed their Complaint on January  
10 12, 2007. Plaintiff-Intervenors filed claims against Defendant for violations of their federally  
11 protected rights under Title VII of the Civil Rights Act of 1964 including, sexual harassment,  
12 discrimination and retaliation. Plaintiff-Intervenors also filed claims for discrimination under 22  
13 Guam Code Annotated §3302, claims for emotional distress, wrongful termination, punitive damages  
14 and attorneys fees.

15 In 2004, Ms. Taimanglo was Defendant's front desk supervisor. She had worked for  
16 Defendant for ten (10) years. In June 2004, Ms. Holbrook had been employed by Defendant for two  
17 and a half (2½) months after having worked for it on a previous occasion. She was employed as a  
18 front desk clerk. By June 2004, Ms. Villanueva had been employed by Defendant for fourteen (14)  
19 months as a front desk clerk.

20 Defendant employed Christine Camacho as a front desk clerk starting in May 2004. She  
21 worked alongside other front desk clerks including Ms. Holbrook and Ms. Villanueva. They all  
22 worked under the front desk supervision of Ms. Taimanglo and corporate management. During her  
23 employment, Ms. Camacho repeatedly conducted herself in a sexually offensive and un-welcomed

1 manner when interacting with her co-workers, Ms. Taimanglo, Ms. Holbrook, Ms. Villanueva. The  
2 Company had knowledge that co-worker harassment was being perpetrated by Ms. Camacho on her  
3 fellow co-workers but it did nothing about it.

4 Mr. Greg Perez, the night time front desk supervisor, was told of a June 7<sup>th</sup> incident in which  
5 Ms. Villanueva was grabbed from the right side and then was "sexually humped" by Ms. Camacho.  
6 He realized that was inappropriate and talked to the staff that were on duty who had knowledge of  
7 the incident. Mr. Perez told May Paulino, the Human Resources Manager, about the problem and  
8 then followed up with a written report at Ms. Paulino's request. After conducting his investigation  
9 he wrote a letter dated June 23, 2004 to May Paulino about the incident. Notwithstanding the letter  
10 or her prior conversation with Mr. Perez, Ms. Paulino took no action.

11 On July 1, 2004, Ms. Taimanglo went to Ms. Paulino to follow-up on Mr. Perez's letter and  
12 to complain about Ms. Camacho's continuing offensive behavior which was creating an intolerable  
13 hostile environment behind the front desk counter. Ms. Paulino was aware that the area in which  
14 the front desk employees work is very small. There is no place to run, or escape, to avoid each other  
15 because of the close working quarters. Ms. Taimanglo explained her complaints in detail to Ms.  
16 Paulino.

17 Management personnel including, Mr. Hong, the assistant sales manager, Mr. Suzuki, the  
18 front desk manager, and Mr. Ijima were aware of Ms. Camacho's offensive behavior. They did  
19 nothing to intervene or curtail Ms. Camacho's behavior or remove her from the hostile environment  
20 created by her actions and continued employment. Defendant took no action to separate Ms.  
21 Camacho from her fellow co-workers or left the Plaintiff-Intervenors to deal with Camacho's  
22 behavior. Human Resources unresponsiveness was especially disheartening to Ms. Taimanglo who  
23 felt that the Company would not question her veracity and immediately take action on the

1 complaints. Instead, Mr. Suzuki, the front desk manager, was consulted. He did not want to  
2 terminate or remove Ms. Camacho from the front desk. He told Paulino the company was "short of  
3 staff." Upset with the Company's response to their complaints but not wanting to jeopardize their  
4 job, Ms. Taimanglo, Ms. Holbrook and Ms. Villanueva simply tried to ignore Ms. Camacho and  
5 endure. At no time did anybody from the Company inform Ms. Taimanglo, Ms. Holbrook and Ms.  
6 Villanueva that their complaints would be taken care of nor were any written statements requested  
7 from the employees.

8 On numerous occasions between mid-June 2004 and August 11, 2004, Ms. Camacho made  
9 unwelcomed, rude and offensive sexually explicit comments and acted out in sexual ways towards  
10 Ms. Taimanglo, Ms. Holbrook and Ms. Villanueva. A brief summary of Camacho's workplace  
11 behavior during that time from are as follows:

- 12 (1) Ms. Camacho consistently used vulgar language and sexual references in front of  
13 Plaintiff-Intervenors and, on occasion, guests of the hotel. She was repeatedly  
14 warned by Ms. Taimanglo and her co-workers to stop swearing in the workplace.  
15 Ms. Taimanglo, Ms. Holbrook and Ms. Villanueva also told Ms. Camacho that her  
16 constant swearing and sexual references offended them and told her to stop.  
17 Regardless, Ms. Camacho never changed her patterns of offensive speech and  
18 behavior.
- 19 (2) Ms. Camacho approached Ms. Holbrook and asked "Have you ever tried having oral  
20 sex during your period?, I have done it with Jessica (her girlfriend) and it doesn't  
21 taste so bad. Would you like me to try it on you?" Ms. Holbrook looked at her in  
22 disgust and told her to get away from her and to leave her alone. Notwithstanding  
23 the warnings, around the same period of time, Ms. Camacho approached Ms.  
Holbrook and stated "You make me wet!"
- (3) Ms. Camacho made sexually explicit, offensive jokes and was told by Taimanglo,  
Holbrook and Villanueva to stop such behavior. They also told Ms. Camacho that  
they found her comments offensive.
- (4) In early June, Ms. Camacho grabbed Ms. Holbrook's arm and raised it up to her  
breast. Ms. Holbrook yanked her arm away and yelled at Ms. Camacho to stop.
- (5) Ms. Camacho would place towels into her pants and comment on her "penis" and try

1 to rub against her co-workers.

- 2 (6) Ms. Camacho's inappropriate comments were also hurled at guests. Ms. Camacho  
3 would make comments to guests like "Can I take your bags? Can I take your wife?"  
4 Once, when a wedding couple was checking out Ms. Camacho saw their wedding  
5 candle and told them that she thought it was a vibrator. Ms. Taimanglo told Ms.  
6 Paulino that the Japanese hotel guests understood her comments and were surprised  
7 and stunned. Ms. Taimanglo repeatedly apologized to the guests for Ms. Camacho's  
8 comment.
- 9 (7) In June, while working at the front desk, Ms. Villanueva was grabbed from behind  
10 by Ms. Camacho who then proceeded to "sexually hump" Ms. Villanueva.  
11 Villanueva loudly objected to Camacho.
- 12 (8) On July 7, 2004, Ms. Camacho walked up to Ms. Holbrook from behind and slapped  
13 her on her buttocks in an extremely hard manner. Ms. Holbrook screamed and was  
14 very upset. The sound of the slap and Ms. Holbrook's loud scream caused Mr. Hong,  
15 who was in the office behind the front desk, to come out to see what had happened.  
16 Mr. Hong asked what happened but despite being told what happened he did  
17 nothing. After she slapped Ms. Holbrook, Ms. Camacho told Ms. Holbrook "Sorry,  
18 I can't help myself."
- 19 (9) On August 10, 2004, at approximately 6:30 a.m., Ms Camacho walked up behind Ms  
20 Taimanglo and slapped her hard on the buttocks. Ms. Taimanglo was extremely  
21 upset by what happened and yelled at Ms. Camacho. It was the second time Ms.  
22 Taimanglo was slapped on the buttocks by Ms. Camacho. The first time occurred a  
23 month earlier when Ms. Taimanglo and Ms. Camacho were exiting the Defendant's  
shuttle bus.

Ms. Taimanglo, Ms. Holbrook and Ms. Villanueva often told Ms. Camacho that her actions  
and comments were offensive and un-welcomed. They did not know how else to handle the situation  
since their complaints went unheeded despite management being witness to, and aware of Ms.  
Camacho's behavior. The Plaintiff-Intervenors tried to ignore Ms. Camacho's behavior but the  
hostile environment created by both Ms. Camacho's actions and the Company's non-action to the  
employees complaints created stressful, fearful, tense and nearly unbearable work days behind the  
front desk because Plaintiff-Intervenors didn't know what would happen next.

Defendant had the opportunity to stop Ms. Camacho's behavior but didn't. Instead it

1 escalated when she physically assaulted Ms. Taimanglo and Ms. Holbrook by slapping them hard  
2 on their buttocks and when she physically assaulted Ms. Villanueva by grabbing her and simulating  
3 a sex act.

4 On Wednesday, August 11, 2004, the Plaintiff-Intervenors complained again. Ms. Paulino  
5 summoned Ms. Camacho for a meeting and also summoned Ms. Taimanglo, Ms. Holbrook and Ms.  
6 Villanueva. Ms. Paulino violated the confidential nature of the complaints and disclosed to Ms.  
7 Camacho that Ms. Taimanglo, Ms. Holbrook and Ms. Villanueva were the complaining parties and  
8 what their complaints were. When they went back to work after the meeting, the atmosphere at the  
9 front desk was more hostile and more tense than before. Ms. Paulino's actions left Ms. Taimanglo,  
10 Ms. Holbrook and Ms. Villanueva stressed, fearful, upset and confused about what to do since they  
11 were still working with Camacho.

#### 12 **THE LAW AND DEFENDANT'S POLICIES**

13 Defendants response to the numerous actions of Ms. Camacho have been fully deficient and  
14 do not come close to complying with the law or Defendant's rules. The Company's Employee  
15 Handbook states the Sexual Harassment Policy of the Company. The Policy states that if someone  
16 thinks they have been subjected to Sexual Harassment they should report it to the Human Resources  
17 Department and "the Human Resources Department will conduct a full investigation into all of the  
18 surrounding circumstances..." The policy also states "This is a sensitive area of concern and care  
19 will be taken to protect the privacy and reputation of all concerned. To the best extent possible, we  
20 will attempt to keep confidential the identity of the employee reporting the incident involving  
21 discrimination or harassment. If the report appears to have merit, appropriate disciplinary action will  
22 be taken against the offender... The final decision rests with the General Manager or his/her  
23 designated representative." Defendant's sexual harassment policy certainly was not followed in this

1 case. Defendant did nothing and, thus, failed to comply with Federal Law and provided no direction  
2 or relief for Ms. Taimanglo, Ms. Holbrook and Ms. Villanueva to follow, instead throwing them  
3 back into the same hostile environment they sought relief from.

4 Defendant has a sexual harassment policy stated in its handbook. On September 26, 2003,  
5 the Defendant provided a four (4) hour training course entitled Preventing Sexual Harassment in the  
6 Workplace. The course was presented by Bill Borja and staff of the Guam Employers Council. Ms.  
7 Taimanglo and Ms. Paulino were attendees at the course. After one (1) hour, there was a break and  
8 Ms. Paulino left. According to Mr. Borja, she did not return for the remainder of the course. Rose  
9 Taimanglo attended the entire course and received a certificate for the training. Ms. Paulino may  
10 also have received a certificate despite her non-attendance.

11 The United States Supreme Court in 1998 clarified the law regarding sexual harassment  
12 claims in two cases, *Faragher v. City of Boca Raton*, 524 U.S. 775, and *Burlington Industries v.*  
13 *Ellerth*, 524 U.S. 742. The Supreme Court announced a three-step approach to be used in deciding  
14 liability in sexual harassment claims. First, if a supervisor's harassment results in a victim suffering  
15 a "tangible employer action," such as discharge, demotion or undesirable reassignment, the company  
16 is always liable for paying damages. Second, even if a victim has not suffered a job loss, the  
17 employer is strictly liable for its harassment, but can raise a defense as set forth in the third step of  
18 the analysis. Third, the company may head off liability or significant damages for a "hostile  
19 environment" harassment by proving its innocence. The employer must show that it took  
20 "reasonable care" to prevent and correct any "harassing behavior," that it responded promptly to any  
21 hints of trouble, **and** the plaintiff "unreasonably failed" to complain about abuse. The employer has  
22 the burden of proving both of the elements by preponderance of the evidence.

23 The Company failed to meet the requirements of the *Faragher* decision to avoid liability.

1 The Company did not exercise reasonable care to prevent or correct the harassing conduct as  
2 required by *Faragher*. It was not until Ms. Taimanglo, Ms. Holbrook and Ms. Villanueva  
3 complained again on August 11, 2004 that anything was done and then the Company's remedy was  
4 to send Ms. Camacho home for the day without any explanation to my clients of what was needed  
5 from them or what to expect next.

6 Ms. Taimanglo, Ms. Holbrook and Ms. Villanueva suffered direct economic harm by using  
7 sick leave because of Ms. Camacho's behavior. Because of the ongoing nature of this case they are  
8 still traumatized by Ms. Camacho's behaviors. Plaintiff-Intervenors emotional distress manifested  
9 itself in similar symptoms of loss of concentration, headaches, stress, sleeplessness, loss of appetite  
10 and anxiety.

11 Defendant's decision to ignore the complaints because they were "short of staff"  
12 demonstrates that Defendant does not have an actual sexual harassment policy, only words printed  
13 in Defendant's employee handbook. Despite receiving the letter from Mr. Perez on June 23, 2004,  
14 Ms. Paulino never went to the front desk after June 23, 2004 to check on how things were going.  
15 Defendant simply tolerated Ms. Camacho's behavior. Clearly, Paulino's non-action and the non-  
16 action by Defendant contradict any assertion they may have that Defendant has a zero tolerance  
17 policy for sexual harassment.

### 18 EMOTIONAL DISTRESS

19 The hostile environment created by both Ms. Camacho's actions and the Company's non-  
20 action to the employees complaints created a stressful, fearful, tense and nearly unbearable work  
21 situation behind the front desk. At no time between June 23<sup>rd</sup> and August 10<sup>th</sup>, did the Company do  
22 anything to intervene on behalf of the complaining employees or deal with Ms. Camacho to curtail  
23 her offensive conduct despite knowledge of the situation.



1 Mr. Suzuki, Mr. Ijima, Mr. Hong and Ms. Paulino are all management personnel of the  
2 Company. They each failed to address the behaviors of Ms. Camacho against here co-workers until  
3 August 13, 2004 when Ms. Camacho was terminated. Ms. Camacho's termination did not resolve  
4 my Clients' problems. After her termination Plaintiff-Intervenors sought counseling because of  
5 stress and all were told by their counselors to take two (2) weeks off before returning to work. Ms.  
6 Holbrook chose to continue her employment while Ms. Taimanglo and Ms. Villanueva did take two  
7 (2) weeks off. However, the stress of what had happened and the continuing stress of the job in light  
8 of their claims caused them to eventually leave their employment.

9 The EEOC guidelines describe hostile work environment harassment as "conduct [which]  
10 has the purpose or effect of unreasonably creating an intimidating, hostile *or* offensive working  
11 environment." *Ellison v. Brady*, 924 F.2d 872, 876 (9<sup>th</sup> Cir. 1991)(citing *Rogers v. E.E.O.C.* 454  
12 F.2d 234 (5<sup>th</sup> Cir.1971) (See also *29 CFR § 1604.11 (a)(3)*) . In *Ellison* the Ninth Circuit stated that  
13 to state a claim under Title VII, sexual harassment "must be sufficiently severe or pervasive to alter  
14 the conditions of the victim's employment and create an abusive working environment. *Id.* It is the  
15 harasser's conduct which must be pervasive or sevre, not the alteration in the conditions of  
16 employment. *Id.* at 878. The standard applied to establish a prima facie case of hostile environment  
17 sexual harassment is what a reasonable woman would consider sufficiently severe or pervasive to  
18 alter the conditions of employment and create an abusive working environment. *Id.* at 889 (*citing*  
19 *Andrews v. City of Philadelphia*, 895 F.2d 611, 626. (3<sup>rd</sup> Cir. 1990). "In evaluating the severity and  
20 pervasiveness of sexual harassment, we should focus on the perspective of the victim." *Ellison* at  
21 878. If we only examined whether a reasonable person would engage in allegedly harassing conduct,  
22 we would run the risk of reinforcing the prevailing level of discrimination. Harassers could continue  
23 to harass merely because a particular discriminatory practice was common, and victims of

1 harassment would have no remedy. *Id.* The court does not evaluate what the harasser did, but  
2 instead focuses on the effect of the treatment by the harasser on a reasonable woman.

3 The Ninth Circuit would agree that Plaintiff-Intervenors' feelings of stress and emotional  
4 distress from working in what they reasonably perceived as an offensive working environment with  
5 hostility and intimidation from management, notwithstanding Camacho's termination, was a  
6 reasonable reaction to the treatment these women were subjected to at the hands of Leo Palace. The  
7 *Ellison* court discussed that by acknowledging and not trivializing the effects of sexual harassment  
8 on reasonable women, courts can work towards ensuring that neither men nor women will have to  
9 "run a gauntlet of sexual abuse in return for the privilege of being allowed to work and make a  
10 living." *Ellison* at 879, 880 (citing *Henson v. Dundee*, 682 F.2d 897 (11<sup>th</sup> Cir. 1992)).

11 Instead, Holbrook's work schedule was changed and Plaintiff-Intervenors were basically  
12 shunned by management. They were forced to work with supervisors who were treating them  
13 differently as if they were the problem. When viewing the totality of the circumstances as they  
14 existed, reasonable women in a similar situation would feel as though the conditions of their  
15 employment were altered and offensive and they were being retaliated against. As such, the hostile  
16 work environment continued. The firing of Camacho did not remove the hostile work environment,  
17 it simply changed it. The offenders became the managers and supervisors.

18 Conduct can unreasonably interfere with work performance without causing debilitation and  
19 without seriously affecting an employees well-being. *Ellison* at 878. A hostile work environment  
20 can exist when the emotional and psychological stability of the worker is not completely destroyed.  
21 *Id.* Plaintiff-Intervenors sought psychological treatment in August 2004 and their therapists  
22 recommended that all three take two weeks medical leave to help their psychological well being.  
23 However, all three have financial obligations and only two actually took time off.

1 **WRONGFUL TERMINATION**

2 Defendant contends that Plaintiff-Intervenors were not constructively terminated. This a  
3 question of fact for the jury to decide. However, the facts will show that after Camacho was fired,  
4 Plaintiff-Intervenors continued to work for Leo Palace because they wanted to keep their jobs. They  
5 worked with the same employees and for the same managers and supervisors who initially failed to  
6 take any action to investigate their claims. Management offered no training of any sort to the  
7 managers and supervisors. Plaintiff-Intervenors were under an extreme amount of stress at work and  
8 felt isolated and overwhelmed. Plaintiff-Intervenors working conditions should have improved.  
9 Unfortunately, due to the unlawful actions by management they did not. In fact, Mr. Maruyama  
10 confronted Ms. Holbrook and in a loud voice demanded to know why she was suing the company.  
11 On another occasion, after returning from a two week leave that was recommended by her therapist,  
12 Mr. Maruyama asked her if there were any sexual harassment reports. The conditions of  
13 employment become intolerable and defendant's overall behavior towards Plaintiff-Intervenors was  
14 grossly negligent or intentional. The sexual harassment they suffered at the hands of Camacho, the  
15 delayed action on the part of Defendant's management and the continued hostile work environment  
16 perpetuated by management left them with no choice but to resign. Ms. Holbrook testified in  
17 deposition that she "just wanted to get out of there" and Ms. Taimanglo testified that "she had  
18 enough and could not take it anymore." The Defendants retaliation and the subsequent resignations  
19 constituted wrongful termination.

20 **EEOC'S TRIAL BRIEF ARGUMENTS**

21 The Plaintiff-Intervenors further adopt the EEOC's arguments of the EEOC in this case since  
22 the facts and analysis for the federal claims overlap the Plaintiff-Intervenors local claims with the  
23 exception of the attorneys fees analysis. The Law Office of Teker Torres & Teker has represented


1 the Plaintiff-Intervenors for more than three years. That representation has included pre-litigation  
2 negotiations, pursuit of all administrative remedies and all aspects of litigating this case.  
3 Representation in this case was undertaken on a contingent fee basis but if analyzed in a traditional  
4 manner attorneys fees and costs are approaching one hundred thousand dollars.

5 **ABANDONMENT OF ISSUES**

6 Plaintiff-Intervenors do not abandon any issues in their Complaint.

7 *Respectfully submitted* this 5<sup>th</sup> day of November, 2007.

8 **TEKER, TORRES & TEKER, P.C.**

9  
10 By:   
11 **PHILLIP TORRES, ESQ.**

12 Attorneys for Plaintiff-Intervenors,  
13 *Jennifer Holbrook, Rosemarie*  
14 *Taimanglo and Vivienne Villanueva*

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1 **CERTIFICATE OF SERVICE**

2 I, Phillip Torres, Esq., declare as follows:

3 1. I am over the age of majority and am competent to testify regarding the matters stated  
4 herein.

5 2. I hereby certify that on November 5, 2007, Plaintiff-Intervenors' Trial Brief was  
6 served by hand delivery on:

7 Thomas L. Roberts, Esq.  
8 **Dooley, Roberts & Fowler, LLP**  
865 S. Marine Corps Dr., Ste. 201  
9 Orlean Pacific Plaza  
Tamuning, Guam 96913

10 and via electronic mail on:

11 Angela Morrison, Esq.  
12 Trial Attorney  
13 **United States Equal Employment  
Opportunity Commission**

14 I declare under the penalty of perjury under the laws of the United States of America that  
15 the foregoing is true and correct.

16 DATED this 5<sup>th</sup> day of November, 2007.

17   
18 PHILLIP TORRES